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Recommended Citation

Rasley, Jeff. "The Most Litigious People in the World." *The Phi Beta Kappa Key Reporter* , Summer 2009. Available from: http://digitalcommons.butler.edu/facsch_papers/325

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This article was originally published in *The Phi Beta Kappa Key Reporter* at <http://www.pbk.org/userfiles/file/flashversion/Summer2009/pageflip.html>

The Most Litigious People in the World

by Jeff Rasley
Summer 2009

When I went to Palau in the South Pacific in 2001 for the first time, it was to fulfill a dream of scuba diving and solo-kayaking around The Rock Islands. The Rock Islands are one of the most pristine diving and kayaking locations in the world with coral-covered reefs, tropical fish and secluded beaches. However, as a Phi Beta Kappa I was not content just to enjoy paradise. Some companions accuse me of always seeking the thorns among the roses. But my liberal arts education at the University of Chicago taught me to analyze and study the environments and cultures I encounter as part of the pleasure I find in the experience.

During my second visit to Palau, I met 84 year-old Klerang Melimerang, who lived alone in the jungle. She claimed her rights to the land on which she lived all her life through seven generations of matrilineal descent back to “Temtik, the one who first found this land.” Klerang’s dwelling was an open-air shelter, where she lived until her death in 2006. She bathed in a stream that ran behind her home. She tended her taro patch in the day and enjoyed the call of birds and the beauty of the stars at night. She told me she had only one worry—that the lawsuit over the title to her land would not be resolved before she died. It wasn’t.

About 12,000 native Palauans live in Palau, and 6,000 live off-island. Land ownership in Palau is legally restricted to Palauans. Yet, so many in the capitol city of Koror, estimated that 10,000 cases had been filed and that 20,000 more will be filed; that is, 30,000 cases among 18,000 Palauans. One of the Land Court judges dryly told me, “Palauans are the most litigious people in the world. Land fights are the national past-time.”

Craig Rosillo, Legal Counsel for the State of Koror, claimed that 99% of Palauans are involved in land claims. I believe it. Every Palauan I met there was directly or indirectly involved in real estate litigation. For example, the taxi driver who drove me to the Land Court regaled me about the real estate litigation in which she had been involved for years.

After my third kayaking expedition, I began to research the cause of the litigiousness on this island paradise. The roots were in Palau’s colonial history. Germans began taking land from Palauans in 1899, and the Japanese engaged in massive confiscations after they succeeded the Germans in 1914, until they were ousted by the Americans at the end of World War II.

The Americans, during the Territorial Trust Administration (TTA) of Palau and Micronesia, began the process of trying to return land to dispossessed Palauans. But Anglo-American property law assumes there is a fee title to land, i.e., that property is owned by specific person(s)

set forth in a deed. Palauan clans, however, created no written records of land ownership. Certain areas, like reefs and beaches, were communally controlled by the clan, while residential and cultivated tracts were controlled by individuals and families. Palauan clan customs varied as to who would inherit land rights. In some clans it was typically the eldest son, but in others the “strong member” would decide, and in others the family would decide by group consensus. The “title record” of property was only known by the oral history of the clan.

A written registry of much of the land in Palau, called the “Tochi Daicho,” was created by the Japanese prior to World War II. After the war, the TTA used the Tochi Daicho as the starting place for determining land ownership. Land registered to the Japanese in the Tochi Daicho would be public land controlled by the government. However, if an individual or clan claimed that their land had been taken without just compensation, or by force or duress, then the claim would be presented in court.

The Palauan Congress, called Olbiil Era Kelulau (OEK) enacted the Land Registration Act of 1987. The Act was intended to create a system of ownership recognition on a tract by tract basis for the entire country. Instead, the Act created the opportunity for Palauans to drink deeply from the well of real estate litigation.

The volume and unpredictability of claims is a nightmare in case management for the Land Court. Cadra complained that the number of cases filed with his court is more comparable to the docket of courts in Los Angeles than the docket of a court with jurisdiction over a citizen population of 18,000. Statistics provided by the court reveal that about two cases are resolved each working day. Yet, many cases are decades old, and new cases are filed every day.

In land cases, discovery is not performed and the rules of evidence are relaxed. The only record of land holding other than the Tochi Daicho is oral history. So, according to Doran, “Cases are won by who tells the best story.” Some hearings resemble bardic competitions more than formal judicial proceedings. Palauan case law recognizes that custom and tradition must be proved by expert testimony, and Palauan elders are happy to serve as expert witnesses relating the oral history of their clans (and turn a buck in the process).

The hearing I observed was an interesting synthesis of tradition and formality. An elder employed by one of the parties chanted a clan genealogy like a chapter from Moses’ Book of Numbers, while attorneys for the contesting parties sat at counsel tables in suits and the black-robed judge presided from the bench.

Cadra laughingly agreed that hearings in the Land Court can certainly try the patience of the judges. Traditional Palauan legends are hundreds of years old, but are recited in court as evidence of a particular clan’s claim.

Outsiders may be surprised to discover the extent and complexity of land disputes in this small island nation, but to some Palauans, it is tragic. Judge Jerrlyn Uduch Senior expressed heartache

over seeing families torn apart by land disputes. “It used to be, land was just a place to put a house. Now, people want land for its commercial value.” She fears consumerism and commercialism are replacing communalism and living in harmony with nature as Palauans’ core values.

The traditional creation myth of Palau is that its islands were formed by the painful death of the giant Uab. He fell into the ocean face down after he was burned to death by Palauan villagers. The islands of Palau were formed by the parts of Uab’s body that remained above sea level. Perhaps it was fated then, that the descendants of those villagers who created the land out of Uab’s painful death would find the land painful to own.

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